

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 5:22-cv-1417-FLA-PD Date: January 10, 2023

Title *Johnny Theodore Orsinger v. Mr. Hammed*

Present: The Honorable: Patricia Donahue, United States Magistrate Judge

Isabel Verduzco
Deputy Clerk

N/A
Court Reporter / Recorder

Attorneys Present for Plaintiff:

Attorneys Present for Defendant:

N/A

N/A

Proceedings: (In Chambers) Order to Show Cause Re: Dismissal

On September 6, 2022, Plaintiff Johnny Theodore Orsinger (“Plaintiff”), an inmate at the United States Penitentiary-Victorville (“USP-Victorville”) filed a First Amended Complaint (“FAC”) under *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 396 (1971). [Dkt. No. 6.] Plaintiff alleges that on August 8, 2022, Defendant SIS Officer Hammed acted unprofessionally by placing Plaintiff’s life in imminent danger. [*Id.* at 3, 5.] He alleges that staff have forced him to be placed in the General Population even though he has been placed in Protective Custody since 2016. [*Id.* at 5.] Plaintiff alleges that Defendant Hammed has “unverified” his Protective Custody status, and that Plaintiff is now subject to being assaulted or killed. [*Id.*] Plaintiff alleges that his Eighth Amendment rights against cruel and unusual punishment were violated. [*Id.*]

On November 7, 2022, the Court granted Plaintiff’s request to proceed without payment of filing fees. [Dkt. No. 10.]

On November 10, 2022, the Court screened the FAC pursuant to 28 U.S.C. § 1915A(a)-(b)(1) and dismissed the FAC for: (1) failing to adhere to Rule 8 of the Federal Rules of Civil Procedure; (2) failing to state a cognizable claim under *Bivens*; and (3) failing to state sufficient facts warranting a temporary restraining order or preliminary injunction against the Bureau of

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Prisons or the Warden. [Dkt. No. 11.] The Order stated that if Plaintiff wishes to proceed only on his Eighth Amendment claim against Defendant Hammed, he must notify the Court by December 12, 2022. Otherwise, Plaintiff must file a Second Amended Complaint by December 12, 2022. [*Id.*]

The deadline for responding to the Court's November 10, 2022 Order and filing Plaintiff's Second Amended Complaint has passed, and Plaintiff has neither filed his Second Amended Complaint nor communicated with the Court about his case since October 26, 2022. [Dkt. No. 9.]

Pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, an action may be subject to involuntary dismissal if a plaintiff "fails to prosecute or to comply with these rules or a court order." Accordingly, the Court could properly recommend dismissal of the action for Plaintiff's failure to timely comply with the Court's November 10, 2022 Order.

However, in the interests of justice, **Plaintiff is ORDERED TO SHOW CAUSE on or before January 27, 2023**, why the Court should not recommend that this action be dismissed for failure to prosecute.

Plaintiff may discharge this Order by filing:

- (1) a request setting forth good cause for an extension of time to notify the Court that he wishes to proceed only on his Eighth Amendment claim against Defendant Hammed or he must file a Second Amended Complaint and a declaration signed under penalty of perjury, explaining why he failed to comply with the Court's November 10, 2022 Order; or
- (2) a Second Amended Complaint.

Alternatively, if Plaintiff does not wish to pursue this action, he may file a signed document entitled "Notice of Voluntary Dismissal" pursuant to Rule 41(a)(1)(A). **The Clerk is directed to provide Plaintiff with a Form CV-09 Notice of Dismissal.**

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Plaintiff is advised that the failure to timely comply with this order may result in the dismissal of this case pursuant to Fed. R. Civ. P. 41(b) and Local Rule 41-1.

IT IS SO ORDERED.

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Initials of Preparer